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10/589,445

08/11/2006

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EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1783

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07/19/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/589,445 | Applicant(s) BEELE, JOHANNES ALFRED | |
| | Examiner BRENT T. O'HERN | Art Unit 1783 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 11-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I, claims 1-10 in the reply filed on 7/9/2010 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The requirement is still deemed proper and is therefore made FINAL.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "lubricant" in claim 10, line 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

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prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance. See also MPEP 608.02(d).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

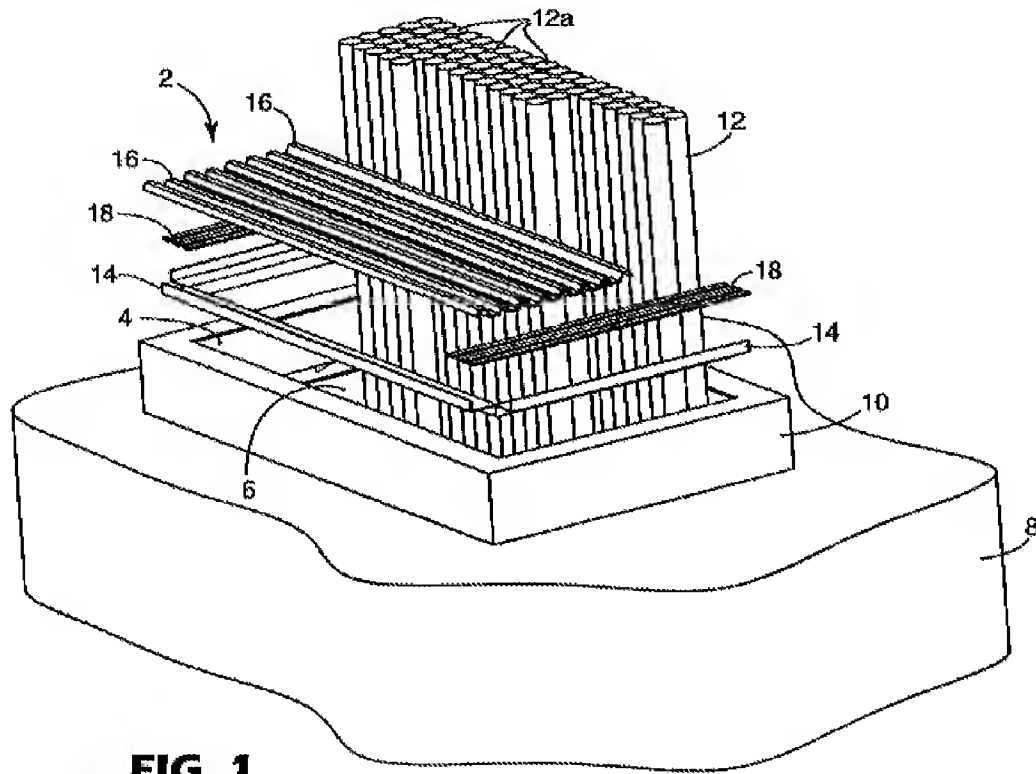
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

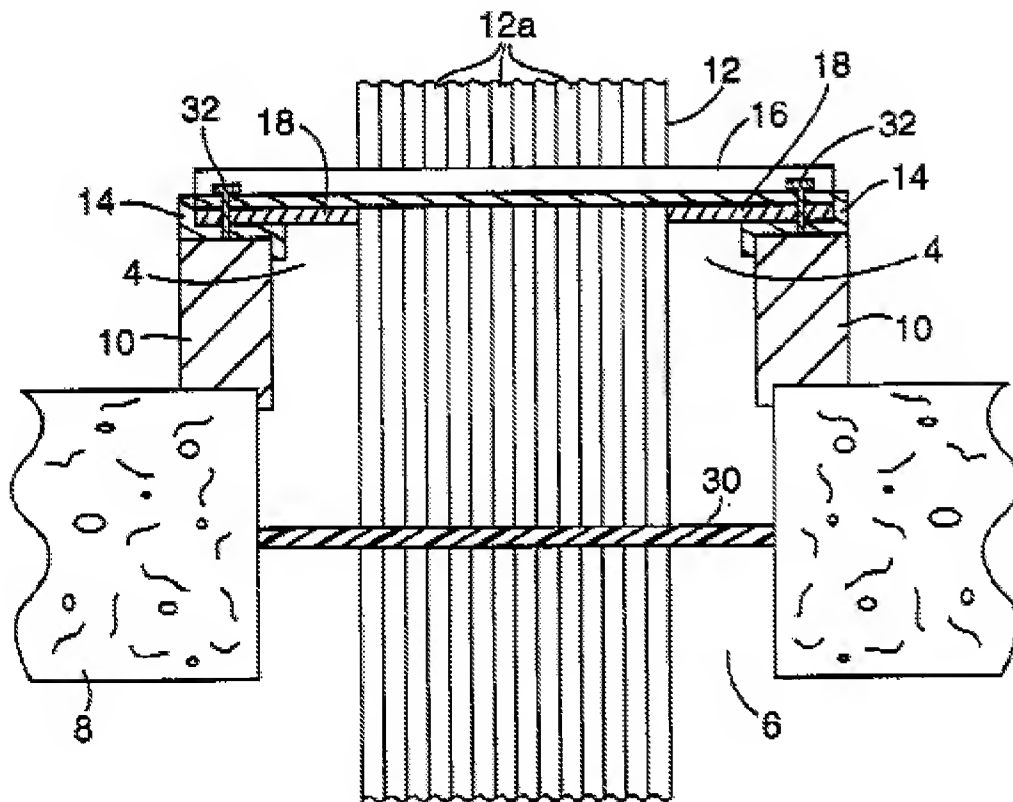
5. Claims 1-3, 5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cordts et al. (US 2004/0093814) in view of Atkinson et al. (GB 2226033A) and Beele (US 5,344,106).

Regarding claims 1-2, Cordts ('814) teaches a system comprising first and second fire-resistant parts for at least temporary fire-resistant sealing of an opening in a

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wall (See paras. 21-31, 34-38 and FIGs 1 and 3, cover assembly 2, with fire-resistant overlapping slats 16, side members 18, frame 14, riser 10 and stop material 30. See also the fire-resistant barrier material disclosed at para. 38.)



**FIG. 3**

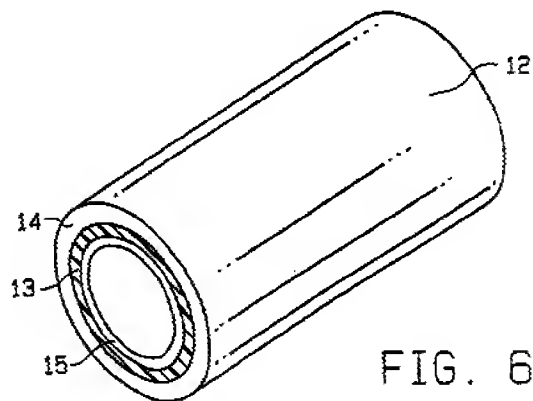
in which at least one transport device has been fed through, or will be fed through, each of the first and second parts being at least partly placeable in the opening (*See FIGs 1 and 3, bundle 12 of items 12a through opening 4 and the fire-resistant materials.*), the first parts being designed to at least partly envelop the transport device and the second parts being designed to be placed between the first parts and/or between the first parts and an inner wall of the opening to at least virtually completely seal the opening (*See FIGs 1 and 3 and para. 38 where all of the materials are within the opening.*), the first parts being substantially manufactured from a fire-resistant material (*See paras. 29-33 and 38.*), the second parts being manufactured from a fire-resistant material based on a

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graphite elastomeric foam with a substantially closed cell structure that can include a magnesium ammonium phosphate additive (*See paras. 29-33 and 38 wherein the barrier is a closed cell foam.*), however, fails to expressly disclose the first part being rubber, with the foam including at least one crust-forming, fire-retardant material and the foam includes a pH-neutralized graphite material.

Atkinson ('033) teaches a combustion modified material comprising a polymer foam incorporating expandable graphite in which a substantially water-insoluble neutralizing substance is incorporated to control the pH value of the material during and after manufacture (*See Abstract, p. 2, ll. 1-6, p. 4, l. 9 to p. 5, l. 3.*) for the purpose of providing a fire retardant material that is neutralized and does not interfere with the performance of the foam material (*See p. 2.*). The outer structure of the foam is the crust.

Beele ('106) teaches conduits for wall penetrations including rubber sleeves (*See col. 4, ll. 1-25 and FIGs 1 and 6, sleeve 12 with expandable fire resistant layers 14 and 16.*)



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wherein in case of a fire the sleeve will expand by the flow of hot air thereby closing off the flow air (*See col. 4, ll. 1-25.*).

Therefore, it would have been obvious to use the fire-resistant rubber as taught by Beele ('106) and the expandable graphite as taught by Atkinson ('033) in Cordts ('814) in order to provide a sealing material and foam that are fire resistant without an acid interfering with the performance of the material that closes the flow of air.

Regarding claim 3, Cordts ('814) teaches wherein the graphite material expands at a temperature higher than 200°C (*See para. 33.*).

Regarding claim 5, Cordts ('814) teaches wherein at least one of the second parts is designed in the shape of a plate-shaped element or a beam-shaped element (*See FIGs 1 and 3.*).

Regarding claim 7, Cordts ('814) teaches wherein at least one of the first parts is sleeve-shaped and includes a slot to allow the at least one of the first parts to be placed around the transport device (*See FIGs 1 and 3. The claims do not describe the shape of the sleeve.*). Beele ('106) also teaches a sleeve (*See FIG-6, 12.*).

Regarding claim 8, Cordts ('814) teaches wherein the at least one of the first parts is constructed and arranged to allow longitudinal edges of the slot to permanently overlap each other under the influence of material stress (*See FIGs 1 and 3.*).

Regarding claim 9, Cordts ('814) teaches wherein at least two of the first parts are designed such that the at least two of the first parts can together form a sleeve that is placeable around the transport device (*See FIGs 1 and 3. The claims do not describe the shape of the sleeve.*). Beele ('106) also teaches a sleeve (*See FIG-6, 12.*).

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6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cordts et al. (US 2004/0093814) in view of Atkinson et al. (GB 2226033A), Beele (US 5,344,106) and Horacek et al. (US 5,232,976).

Cordts ('814), Atkinson ('033) and Beele ('106) teach the system discussed above and Cordts ('814) teaches incorporating magnesium ammonium phosphate in the graphite foam material (*See paras. 31-33.*), however, fail to expressly disclose wherein the fire-retardant material includes polyammonium phosphate or melamine phosphate.

Horacek ('976) teaches incorporating magnesium ammonium phosphate or melamine and its derivatives and graphite salts into fire-resistant structures (*See col. 2, l. 67 to col. 3, l. 8.*) for the purpose of modifying the fire behavior and completely sealing off openings when they expand in the event of a fire (*See col. 3, ll. 3-8.*).

Therefore, it would have been obvious to use the polyammonium phosphate or melamine derivatives as taught by Horacek ('976) in Cordts' ('814) structure in order to seal off openings in the event of a fire.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cordts et al. (US 2004/0093814) in view of Atkinson et al. (GB 2226033A), Beele (US 5,344,106) and Fay (US 6,484,463).

Cordts ('814), Atkinson ('033) and Beele ('106) teach the system discussed above, however, fail to expressly disclose wherein at least one of the second parts is part of a plate-shaped material that includes a weakening line along-which at least one of the second parts can be detached.

However, Fay ('463) teaches insulation material including lines along which the parts be detached (*See col. 4, l. 52 to col. 6, l. 2 and FIG-2, where the members of the structure can be detached along 34, 36 and 38.*) for the purpose of separating the members without a cutting tool (*See col. 5, ll. 1-8.*).

Therefore, it would have been obvious to provide Cordts' ('814) parts with weakening lines as taught by Fay ('463) in order to provide a means to separate the members without a cutting tool.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cordts et al. (US 2004/0093814) in view of Atkinson et al. (GB 2226033A), Beele (US 5,344,106) and Massey (US 4,361,721).

Cordts ('814), Atkinson ('033) and Beele ('106) teach the system discussed above, however, fail to expressly disclose a lubricant which can be applied to a surface of each of the first and/or second parts.

Massey ('721) teaches applying lubricants to cables that are jacketed with fire-resistant sheaths (*See Abstract, col. 5, ll. 11-20 and col. 1, ll. 11-22.*) to make it easier to insert them in a passageway (*See col. 5, ll. 11-20.*).

Therefore, it would have been obvious to apply a lubricant as taught by Massey ('721) to a surface of Cordts ('814) parts in order to make it easier to insert cables in passageways.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRENT T. O'HERN whose telephone number is

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(571)272-6385. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brent T O'Hern/
Examiner, Art Unit 1783
July 16, 2010